sible for an arrest made by police officers, even though the arrest is made without authority or probable cause. *Owens* v. *Wilmington, etc., R. Co.*, 126 N. C. 139, 35 S. E. 259, 78 Am. St. Rep. 642. This is so even though the conductor points out the passenger to the officer who is in search of him. *Owens* v. *Wilmington, etc., R. Co., supra.* But where the conductor or other servant of the carrier participates in or assists an unlawful arrest the carrier is liable. *Duggan* v. *Baltimore, etc., R. Co., supra; Eichengreen* v. *Louisville, etc., R. Co.*, 96 Tenn. 229, 34 S. W. 219, 3 Am. & Eng. R. Cas. (N. S.) 453, 54 Am. St. Rep. 833, 31 L. R. A. 702.

From these decisions it would seem that the decision in the instant case is thoroughly sound.

CRIMINAL LAW—DENIAL OF CHALLENGE FOR CAUSE—HARMLESS ERROR.—The defendant's challenge of a juror for cause was erroneously overruled. Whereupon the defendant challenged the incompetent juror peremptorily. The record showed that the defendant was allowed one more peremptory challenge than the number to which he was entitled. *Held,* the error is not reversible. *Stroud* v. *United States,* 40 Sup. Ct. 176.

Errors of this character may be divided into two classes: (1) where the court erroneously sustains a challenge for cause, and (2) where the court erroneously overrules a challenge for cause.

Where the court erroneously sustains a challenge for cause, the better view is that this does not constitute a reversible error under any circumstances, since a party is entitled to, and can demand only an *impartial* jury, and if the jury is an impartial one he cannot object. *Wheeler* v. *People* (Colo.), 165 Pac. 257. But the Virginia courts take the opposite view and hold that if a challenge for cause by the Commonwealth is erroneously allowed the error is reversible, since to permit this would in substance allow the Commonwealth a peremptory challenge. *Montague* v. *Commonwealth,* 10 Gratt. (Va.) 767. This rule has probably been changed by a recent statute which entitles the Commonwealth to four peremptory challenges in felony cases and one in misdemeanor cases. See Va. Code, 1919, § 4898.

Cases in which the court erroneously overrules a challenge for cause may be divided into two classes: (a) cases where the juror in question sits on the jury and hears the case, and (b) cases where the juror in question is peremptorily challenged by the defendant.

Where the juror sits and hears the case, the better view is that the error of the court in overruling the challenge is reversible although the defendant had peremptory challenges left which he could have used had he chosen, since the right to challenge peremptorily is a right which the defendant cannot be compelled to exercise in order to expel an incompetent juror. It is a weapon which he can use or not at his pleasure. *People* v. *Bodine,* 1 Denio (N. Y.) 281; *People* v. *McQuade,* 110 N. Y. 284. See *Hawkins* v. *United States,* 116 Fed. 569. On the other hand, it has been held that if, after the panel is complete, the defendant still has peremptory challenges left he cannot object to the erroneous ruling, for the reason that, unless he has used all avail-

able means to exclude all objectionable jurors, he is deemed to have waived his objections. *State* v. *Smith* (N. M.), 174 Pac. 740.

Cases where the defendant peremptorily challenges the objectionable juror may in turn be divided into (1) cases where the defendant still has peremptory challenges left after the impanelling of the jury is complete, and (2) cases where the defendant in peremptorily challenging the incompetent juror exhausts his peremptory challenges before the impanelling of the jury is complete.

Where the defendant does not exhaust his peremptory challenges, the better view is that the error is not reversible since the defendant is in no way injured by the erroneous ruling. The incompetent juror does not sit, and the defendant has peremptory challenges left which he could have used had he so desired. *Hopt* v. *Utah*, 120 U. S. 430; *Richards* v. *United States*, 99 C. C. A. 401, 175 Fed. 911; *McGowan* v. *State*, 17 Tenn. 184; *Preswood* v. *State*, 50 Tenn. 467; *People* v. *Larubio*, 140 N. Y. 87, 35 N. E. 412. The Virginia courts, on the other hand, hold that such an error of the court is not cured by the subsequent exclusion of the juror, although the defendant has not exhausted his peremptory challenges, because nothing should preclude the defendant's right to challenge an incompetent juror for cause. *Dowdy* v. *Commonwealth*, 9 Gratt. (Va.) 727.

Cases in which the defendant exhausts his peremptory challenges before the impanelling of the jury is complete may be divided into (1) cases where no objectionable juror is forced upon the defendant, and (2) cases where an objectionable juror is forced upon the defendant. The better view is that it is immaterial whether an objectionable juror is forced upon the defendant or not; he is nevertheless prejudiced since his peremptory challenges are thereby exhausted. *People* v. *Casey*, 96 N. Y. 115. But it is argued and with some reason that the defendant cannot object so long as there is an impartial jury of twelve men, none of whom are objectionable to the defendant. *People* v. *Schafer*, 161 Cal. 573, 119 Pac. 920; *Sullins* v. *State*, 79 Ark. 127, 95 S. W. 159. But certainly in the second class of cases where because of having exhausted his peremptory challenges the defendant is forced to accept an objectionable juror, he is entitled to a new trial. *People* v. *Riggins*, 159 Cal. 113, 112 Pac. 862; *Commonwealth* v. *Vitale*, 250 Pa. 552, 95 Atl. 724.

DISTURBANCE OF PUBLIC ASSEMBLIES—ASSEMBLAGE FOR RELIGIOUS WORSHIP—DISTURBANCE AFTER DISMISSAL.—A State statute provided punishment for persons disturbing a congregation assembled for religious worship. A congregation assembled for this purpose and was dismissed by the pastor. Immediately thereafter a difficulty occurred on the church grounds and cursing and shooting resulted, causing a part of the congregation, which was then in the church yard to become frightened and to run in various directions. The persons creating the disturbance were indicted under the statute for the disturbance of religious worship. *Held*, the defendants are guilty. *State* v. *Matheny* (S. C.), 101 S. E. 661.